

The Legal Doctrine of Jihad:

THE CHAPTER ON JIHAD FROM AVERROES'
LEGAL HANDBOOK *AL-BIDĀYA*

Introduction

Averroes (Ar.: Abū al-Walīd Muḥammad Ibn Muḥammad Ibn Rushd) was born of a family of lawyers, in the then Arabic town of Córdoba, in 1126 A.D. His grandfather and namesake had written a number of works on Islamic law which enjoyed great popularity and it was as a matter of course that Averroes followed in the footsteps of his ancestors. He held the post of judge (*qāḍī*) in Sevilla and in his native town Córdoba, but he also became known as a physician—he was the court-physician of the Almohad prince Abū Yaʿqūb (who reigned from 1162 until 1184)—and as a philosopher. It is in this latter quality that he achieved fame in Europe, especially through his comments on the works of Aristotle. In the Islamic world, on the other hand, he remained famous chiefly as a lawyer. He died in Marrakesh (Morocco) in 1198.

His best known legal handbook is *Bidāyat al-Mujtahid wa-Nihāyat al-Muqtaṣid* (lit.: The beginning for him who interprets the sources independently and the end for him who wishes to limit himself). With the exception of the chapter on pilgrimage (*ḥadjj*), which he did not finish until 1188, he wrote the work around the year 1167, when he accepted the post of *qāḍī*. The book belongs to the genre of *ikhtilāf*-works. These are treatises in which the opinions of the different schools are juxtaposed and in which the controversies (*ikhtilāf*) between the early lawyers are discussed. Although traditional as far as contents are concerned, the manner of presentation of the *Bidāya* is original. In his treatment of each controversy, Averroes enters deeply into the different arguments underlying it. Usually, he reduces the controversy

to a disagreement about the question of how two conflicting Koran-verses or Traditions are related to each other. This often boils down to the question whether the one rule is a general one and the other an exception, or whether the one rule has abrogated the other. However ingenious these reasonings may be, it is to be kept well in mind that this is a matter of *hineininterpretieren*. The prescriptions of Islamic Law had already been formulated soon after Mohammed's death, the theoretical foundations with Koran-verses and Traditions followed later. Averroes was an adherent of the Malikite School, the ruling one in Islamic Spain. Nevertheless he juxtaposes the opinions of the different Schools with impartiality and refrains from passing judgements on the validity of the arguments brought forward. The only indication that he is a Malikite might be found in the fact that he sometimes expatiates a little longer on the controversies within this school.

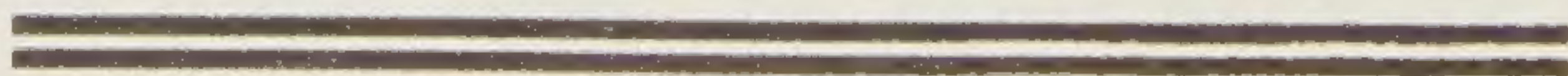
For the translation of the *Bidāya* I used two nearly identical Cairo editions: Muṣṭafā al-Bābī al-Ḥalabī, 1960 and Dār al-Fikr / Maktabat Khānjī, n.d. The points wherein they differ are of minor importance and mainly due to printing errors. The present translation appeared originally in *Jihad in Mediaeval and Modern Islam: The Chapter on Jihad from Averroes' Legal Handbook 'Bidāyat al-Mudjtahid' and the Treatise 'Koran and Fighting' by the Late Shaykh al-Azhar, Maḥmūd Shaltūt*. Translated and annotated by Rudolph Peters. Leiden: E. J. Brill, 1977, pp. 9–25, 80–84.

Literature:

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The Jihad

The most important rules concerning this subject will be dealt with in two chapters. The first will contain the most important regulations as regards warfare, the second the rules pertaining to the enemy's property when it is captured by the Muslims.¹

The first chapter consists of seven paragraphs:

1. The legal qualification (*ḥukm*) of this activity and the persons who are obliged to take part in it.
2. The enemy.
3. The damage allowed to be inflicted upon the different categories of enemies.
4. The prerequisites for warfare.
5. The maximum number of enemies against which one is obliged to stand one's ground.
6. Truce.
7. The aims of warfare.

Par. 1. The Legal Qualification (*Ḥukm*) of this Activity and the Persons Obligated to Take Part in It.

Scholars agree that the jihad is a collective not a personal obligation. Only 'Abd Allāh Ibn al-Ḥasan² professed it to be a recommendable act. According to the majority of scholars, the compulsory nature of the jihad is founded on [2:216]: "*Prescribed for you is fighting, though it be hateful to you.*"³ That this obligation is a collective and not a personal one, i.e. that the obligation, when it can be properly carried out by a limited number of individuals, is cancelled for the remaining Muslims, is founded on [9:122]: "*It is not for the believers to go forth totally,*"⁴ on [4:95]: "*Yet to each God has promised the reward most fair*"⁵ and, lastly, on the fact that the Prophet never went to battle without leaving some people behind. All this together implies that this activity is a collective obligation. The obligation to participate in the jihad applies to adult free men who have the means at their disposal to go to war and who are healthy, that is, not ill or suffering from

chronic diseases. There is absolutely no controversy about the latter restriction because of [48:17]: *"There is no fault in the blind, and there is no fault in the lame, and there is no fault in the sick"*⁶ and because of [9:91]: *"There is no fault in the weak and the sick and those who find nothing to expend."*⁷ Nor do I know of any dissentient views as regards the rule that this obligation applies only to free men. Nearly all scholars agree that this obligation is conditional on permission granted by the parents. Only in the case that the obligation has become a personal one, for instance because there is nobody else to carry it out, can this permission be dispensed with.⁸ This prerequisite of permission is based on the following authentic Tradition: *"Once a man said to the Messenger of God: 'I wish to take part in the jihad.' The Messenger said to him: 'Are both your parents still alive?' When he answered in the affirmative, the Messenger said: 'Then perform the jihad for their sake.'"* Scholars are not agreed whether this permission is also required of parents who are polytheists. There is controversy, too, about the question whether the creditor's permission has to be asked when a person has run into debt. An argument in favour of this can be found in the following Tradition: *"A man said to the Prophet: 'Will God forgive me my sins if I shall sacrifice myself patiently and shall be killed in the way of God (i.e. by taking part in the jihad)?' The Prophet said: 'Yes, with the exception of your debts. This Jibrīl has told me before.'"*⁹ The majority of scholars do not consider it obligatory, especially not when the debtor leaves enough behind to serve as payment for his debts.

Par. 2. The Enemy.

Scholars agree that all polytheists should be fought. This is founded on [8:39]: *"Fight them until there is no persecution and the religion is God's entirely."*¹⁰ However, it has been related by Mālik¹¹ that it would not be allowed to attack the Ethiopians and the Turks on the strength of the Tradition of the Prophet: *"Leave the Ethiopians in peace as long as they leave you in peace."* Questioned as to the authenticity of this Tradition, Mālik did not acknowledge it, but said: *"People still avoid attacking them."*

Par. 3. The Damage Allowed to be Inflicted Upon the Different Categories of Enemies.

Damage inflicted upon the enemy may consist in damage to his property, injury to his person or violation of his personal liberty, i.e. that he is made a slave and is appropriated. This may be done, according to the *Consensus (ijmāʿ)* to all polytheists: men, women, young and old, important and unimportant. Only with regard to monks do opinions vary; for some take it that they must be left in peace and that they must not be captured, but allowed to go unscathed and that they may not be enslaved. In support of their opinion they bring forward the words of the Prophet: "*Leave them in peace and also that to which they have dedicated themselves,*"¹² as well as the practice of Abū Bakr.¹³

Most scholars are agreed that, in his dealings with captives, various policies are open to the Imam [head of the Islamic state, caliph]. He may pardon them, enslave them, kill them, or release them either on ransom or as *dhimmi* [non-Moslem subject of the Islamic state], in which latter case the released captive is obliged to pay poll-tax (*jizya*). Some scholars, however, have taught that captives may never be slain. According to al-Ḥasan Ibn Muḥammad al-Tamīmī,¹⁴ this was even the *Consensus (ijmāʿ)* of the *Ṣaḥāba* [contemporaries of Mohammed that have known him]. This controversy has arisen because, firstly, the Koran-verses contradict each other in this respect; secondly, practice [of the Prophet and the first caliphs] was inconsistent; and lastly, the obvious interpretation of the Koran is at variance with the Prophet's deeds. The obvious interpretation of [47:4]: "*When you meet the unbelievers, smite their necks, then, when you have made wide slaughter among them, tie fast the bonds*"¹⁵ is that the Imam is only entitled to pardon captives or to release them on ransom. On the other hand, [8:67]: "*It is not for any Prophet to have prisoners until he make wide slaughter in the land,*"¹⁶ as well as the occasion when this verse was revealed [viz. the captives of Badr] would go to prove that it is better to slay captives than to enslave them. The Prophet himself would in some cases slay captives outside the field of battle, while he would pardon them in others. Women he used to enslave. Abū ʿUbayd¹⁷ has related that the Prophet never enslaved male Arabs.

After him, the *Ṣaḥāba* reached unanimity about the rule that the People of the Book (*ahl al-kitāb*), both male and female, might be enslaved. Those who are of the opinion that the verse which prohibits slaying [K 47:4] abrogates the Prophet's example, maintain that captives may not be slain. Others profess, however, that this verse does not concern itself with the slaughter of captives and that it was by no means intended to restrict the number of policies possible with regard to captives. On the contrary, they say, the fact that the Prophet used to slay captives adds a supplementing rule to the verse in question [K 47:4] and thus removes the occasion for the complaint that he omitted to kill the captives of Badr. These, now, do profess that the killing of captives is allowed.

It is only allowed to slay the enemy on the condition that *amān* [safe-conduct] has not been granted. There is no dissension about this among the Muslims. There is controversy, however, concerning the question who is entitled to grant *amān*. Everyone is agreed that the Imam is entitled to this. The majority of scholars are of the opinion that free Muslim males are also entitled to grant it, but Ibn Mājishūn¹⁸ maintains that in this case, it is subject to authorization by the Imam. Similarly, there is controversy concerning the *amān* granted by women and slaves. Ibn Mājishūn and Saḥnūn¹⁹ hold that *amān* granted by a woman is also subject to authorization by the Imam. Abū Ḥanīfa²⁰ has taught that the *amān* granted by a slave is only valid when the slave is allowed to join in the fighting.²¹ The source of the controversy is that a general rule is in conflict with the analogous interpretation of another rule. The general rule is founded on the words of the Prophet: "*The blood(money) of all Muslims is equal. Even the humblest strives for their protection. Together, they make up a unity against the others.*" These words, in their universality, imply that *amān* granted by a slave is valid. The conflicting analogy is that in order to be able to grant *amān*, full legal capacity is required. Now, a slave has only partial legal capacity by the very fact of his being a slave. By analogy, the fact that he is a slave should counteract the validity of his *amān*, as it does with regard to numerous other legal acts. The general rule, then, should be restricted by analogy.

The controversy about the validity of *amān* granted by a

woman owes its origin to two different readings of the words of the Prophet: "*We grant protection to those to whom you have granted protection, Umm Hāni*" as well as to the question whether women are to be put on a par with men by analogy. Some read in the words of the Prophet an authorization of the *amān* granted by Umm Hāni, not a confirmation of its validity, and they infer that her *amān* would have had no legal effects had the Prophet not authorized it. Consequently, they maintain that *amān* granted by a woman is only valid when the Imam has authorized it. Others hold that the Prophet confirmed the *amān* granted by Umm Hāni in the sense that he approved something which already existed and had legal effects, not in the sense that the act was only validated by his authorization. Thus, the latter group maintains that a woman is entitled to grant valid *amān*. This view finds also favour with those who, in this respect, put women on a par with men and feel that there is no difference between them here. Others, who are of the opinion that a woman is inferior to a man, consider an *amān* granted by her invalid. Anyhow, *amān* does not afford protection against enslavement but only against death.²² The controversy [about the validity of *amān* granted by women] might also be explained by the divergent opinions about the use of the male plural: does this include women or not? All this, of course, according to legal usage.

As regards injury to the person, that is, the slaying of the enemy, the Muslims agree that in times of war, all adult, able-bodied, unbelieving males may be slain. As to the question whether the enemy may also be slain after he has been captured, there is the above-mentioned controversy. There is no disagreement about the rule that it is forbidden to slay women and children, provided that they are not fighting, for then women, in any case, may be slain. This rule is founded on the fact that, according to authoritative Traditions, the Prophet prohibited the slaughter of women and children and once said about a woman who had been slain: "*She was not one who would have fought.*"²³

There is controversy about the question whether it is allowed to slay hermits who have retired from the world, the blind, the chronically ill and the insane, those who are old and unable to fight any longer, peasants, and serfs. Mālik professes that neither

the blind, nor the insane, nor hermits may be slain and that of their property not all may be carried off, but that enough should be left for them to be able to survive. Neither is it allowed, according to him, to slay the old and decrepit. Of the same opinion are Abū Ḥanīfa and his pupils. Thawrī²⁴ and Awzā'ī,²⁵ however, have taught that of these groups, only the aged may not be slain. On the other hand, Awzā'ī had also taught that this prohibition is also valid with regard to peasants. According to the most authoritative opinion of Shāfi'ī,²⁶ all of these categories may be slain. The source of this controversy is to be found in the fact that in a number of Traditions, rules are given which are at variance with the general rule from the Book [i.e. the Koran] as well as with the general rule of the authentic Tradition: *"I have been commanded to fight the people until they say: 'There is no God but God.'"*²⁷ [9:5]: *"Then, when the sacred months are drawn away, slay the idolaters wherever you find them"*²⁸ as well as the above-mentioned Tradition give as a general rule that every polytheist must be slain, whether he is a monk or not. Nevertheless, the following Traditions, among others, are brought forward in support of the prescription that the lives of the categories mentioned must be saved: 1. Dāwūd Ibn al-Ḥaṣīn²⁹ has related on the authority of 'Ikrima³⁰ on the authority of Ibn 'Abbās³¹ that the Prophet used to say, whenever he sent out his armies: *"Do not slay hermits."* 2. On the authority of Anas Ibn Mālīk³² it has been related that the Prophet said: *"Do not slay the old and decrepit, children, or women. Do not purloin what belongs to the spoils."* Abū Dāwūd³³ included this Tradition in his compilation. 3. Mālīk has related that Abū Bakr said: *"You will find people who will profess that they have dedicated themselves entirely to God. Leave them in peace and also that to which they have dedicated themselves."* 4. *"Do not slay women, nor infants, nor those worn with age."* However, it seems to me that the chief source for the controversy about this question is that [2:190]: *"And fight in the way of God with those who fight you, but aggress not: God loves not the aggressors"* is in conflict with [9:5]: *"Then, when the sacred months are drawn away, slay the idolaters wherever you find them."*³⁴ Some maintain that K 9:5 has abrogated K 2:190, because at the outset it was only allowed to slay people who were able-bodied.³⁵ Consequently, the latter take it that K 9:5 gives a rule without excep-

tions. Others are of the opinion that K 2:190 has not been abrogated and that it is valid with regard to all those categories which do not take part in the fighting. According to these, K 2:190 gives an exceptive regulation as regards K 9:5. Shāfi'ī, in support of his interpretation, argues that it has been related on the authority of Sumra³⁶ that the Prophet commanded: *"Slay the polytheists but spare their children."* The only motive why the enemy should be put to death, according to him, is their unbelief. This motive, then, goes for all unbelievers. Those who maintain that peasants are not to be slain argue that Zayd Ibn Wahb³⁷ has related: *"We received a letter from 'Umar,³⁸ saying: Do not purloin what belongs to the spoils, do not act perfidiously, do not slay babies and be god-fearing with regard to peasants."*³⁹ The prohibition to slay polytheist serfs is based on the Tradition of Rabāḥ Ibn Rabī'a: *"Once, when Rabāḥ Ibn Rabī'a sallied forth with the Messenger of God, he and (the) companions of the Prophet passed by a woman who had been slain. The Messenger halted and said: 'She was not one who would have fought.' Thereupon he looked at the men and said to one of them: 'Run after Khālīd Ibn al-Walīd (and tell him) that he must not slay children, serfs or women.'"* Basically, however, the source of their controversy is to be found in their divergent views concerning the motive why the enemy may be slain. Those who think that this is because they are unbelieving do not make exceptions for any polytheist. Others, who are of the opinion that this motive consists in their capacity for fighting, in view of the prohibition to slay female unbelievers, do make an exception for those who are unable to fight or who are not as a rule inclined to fight, such as peasants and serfs. Enemies must not be tortured nor must their bodies be mutilated. The Muslims agree that they may be slain with weapons. Controversy exists, however, concerning the question whether it is allowed to burn them by fire. Some consider it reprehensible to burn or to assail them with fire. This is also the opinion of 'Umar. It has been related that Mālik held a similar view. Sufyān al-Thawrī, on the other hand, considered it admissible. Others allow it only in case the enemy has started it. The source of this controversy is again in the fact that a general rule and a particular rule are at variance. The general rule is given by [9:5]: *"Slay the idolaters wherever you find them."*⁴⁰ This does not

preclude any manner of slaying. The particular rule is founded on an authoritative Tradition, according to which the Prophet said to a certain man: *"If ye should seize him, then slay him, yet do not burn him. No one is free to punish by means of fire, save the Lord of the (Hell) fire (i.e. God)."* Most scholars agree that fortresses may be assailed with mangonels, no matter whether there are women and children within them or not. This is based on the fact that the Prophet used mangonels against the population of al-Ṭā'if. Some, among whom is Awzā'ī, have taught that mangonels should not be resorted to when Muslim captives or children are within the [walls of the] fortress. Layth,⁴¹ on the other hand, considered it admissible. The argument of those who do not allow it, reads [48:25]: *"Had they been separated clearly, then We would have chastised the unbelievers among them with a painful chastisement."*⁴² Those who do allow it do so, as it were, with a view to the general interest. So much for the extent to which injury may be inflicted upon the person of the enemy.

Opinions vary as to the damage that may be inflicted on their property, such as buildings, cattle and crops. Mālik allowed the felling of trees, the picking of fruits and the demolishing of buildings, but not the slaughter of cattle and the burning of date-palms. Awzā'ī disapproved of the felling of fruit-trees and the demolishing of buildings, regardless of whether the buildings in question were churches or not. According to Shāfi'ī, dwellings and trees may be burnt as long as the enemy have the disposal of fortresses. When that is not the case, he considers it reprehensible to demolish buildings and to fell trees. The reason why there is this divergence of opinions is that the practice of Abū Bakr was at variance with that of the Prophet. According to an authoritative Tradition, the Prophet set fire to the palmtrees of Banū Naḍīr. On the other hand, it has been related as an irrefutable fact that Abū Bakr said: *"Do not fell trees and do not demolish buildings."* Some are of the opinion that Abū Bakr could only have spoken thus because he knew the practice of the Prophet to have been abrogated, since he would of course not have been at liberty to act in defiance of this practice had he known it. There are also those who take it that this policy of the prophet [did not give a general rule but] had reference only to Banū Naḍīr, since it was them who attacked

him. Those who bring forward all these arguments adhere to the view of Abū Bakr. Others, however, go entirely by the practice of the Prophet. They maintain that it is impossible that anybody's words or deeds could be put forward as an argument against his practice and they consider it lawful to burn trees. Mālik makes a distinction between cattle and trees. According to him, the slaughter of cattle is torture, which is prohibited. Moreover, the Prophet is not related ever to have slain animals. So much for the extent to which it is allowed to inflict damage to the lives and property of the unbelievers.

Par. 4. The Prerequisites for Warfare.

According to all scholars, the prerequisite for warfare is that the enemy must have heard the summons to Islam. This implies that it is not allowed to attack them before the summons has reached them. All Muslims are agreed about this because of [17:15]: "*We never chastise, until We send forth a Messenger.*"⁴³ However, there is controversy about the question whether the summons should be repeated when the war is resumed. Some hold that this is obligatory, others consider it merely recommendable, while according to a third group it is neither obligatory nor recommendable [and therefore a matter of indifference]. The source of this controversy is that the words and the deeds of the Prophet are at variance. According to an authoritative Tradition, the Prophet, when he sent out his armies, used to say to the leader: "*When ye will encounter your polytheist foes, then summon them to three things. Accept that which they consent to and refrain from [attacking] them. Summon them to conversion to Islam. If they consent to that, accept it and refrain from [attacking] them. Summon them thereupon to sally forth from their territory to the Abode of the Emigrants (muhādjirūn) [i.e. Medina] and impart to them that, if they do so, they will have the same rights and duties as the Emigrants. If they are unwilling to do so, however, and prefer to remain in their own territory, impart to them thereupon that they will be like the converted Bedouins, who are subject to the same supreme authority of God as the [other] believers, but who are not entitled to a share in the spoils, unless they join the*

Muslims in the war. If they refuse that, then summon them to the payment of poll-tax. If they consent to that, accept it and refrain from [attacking] them. But if they refuse it, then invoke the help of God and attack them." Nevertheless it has been related irrefutably that the Prophet repeatedly made sudden attacks upon the enemy at night or at dawn. Some, consequently, maintain, and they are in the majority, that the practice of the Prophet has abrogated his words. According to the latter, the relevant dictum dates back from an early period of Islam, before the summons had been propagated, because it contains a summons to emigration (*hijra*).⁴⁴ Others are of the opinion that more weight should be attached to the Prophet's words than to his deeds, because the latter are to be interpreted in the light of the particular circumstances. Those, lastly, who consider it recommendable, do so in order to reconcile both views.⁴⁵

Par. 5. The Maximum Number of Enemies Against Which One is Obligated to Stand One's Ground.

The maximum number of enemies against which one is obliged to stand one's ground is twice the number [of one's own troops]. About this, everybody agrees on account of [8:66]: "*Now God has lightened it for you, knowing that there is weakness in you.*"⁴⁶ Ibn Mājishūn maintains, on the authority of Mālik, that the actual force, rather than the number, is to be considered and that it might be allowed for a single man to flee before another if the latter should possess a superior horse, superior weapons and superior physical strength.

Par. 6. Truce.

The conclusion of truce is considered by some to be permitted from the very outset and without an immediate occasion, provided that the Imam deems it in the interest of the Muslims. Others maintain that it is only allowed when the Muslims are pressed by sheer necessity, such as a civil war and the like. As a

condition for truce, it may be stipulated that the enemy pay a certain amount of money to the Muslims. This is not poll-tax (*jizya*), because for that it would be required that they come under Islamic rule [which is not the case here]. Such a stipulation [the payment of a tribute], however, is not obligatory. Awzā'ī even considered it admissible that the Imam should conclude a truce with the stipulation that the Muslims pay a certain amount to the enemy, should this be forced upon them by emergency, such as a civil war and the like. Shāfi'ī's opinion is that the Muslims may never give anything to the unbelievers, unless they are in mortal fear of being extinguished, on account of the enemy's superiority or because they are being harassed by disasters. Among those who profess that the Imam is entitled to conclude a truce when he considers it in the interest [of the Muslims] are Mālik, Shāfi'ī and Abū Ḥanīfa. Shāfi'ī maintains that a truce may not be concluded for a period longer than that of the truce which the Prophet concluded with the unbelievers in the year of Ḥudaybiyya.⁴⁷ The controversy about the question whether the conclusion of truce is also allowed without a compulsive reason, is rooted in the fact that the obvious interpretation of [9:5]: "*Slay the idolaters wherever you find them*,"⁴⁸ and that of [9:29]: "*Fight those who believe not in God and the Last Day*,"⁴⁹ contradict that of [8:61]: "*And if they incline to peace, do thou incline to it*."⁵⁰ Some hold that the verse which commands the Muslims to fight the polytheists until they have been converted or until they pay poll-tax (*jizya*) [K 9:29] abrogates the Peace-verse [K 8:61]. Consequently, they maintain that truce is only admissible in cases of necessity. Others are of the opinion that the Peace-verse [K 8:61] supplements the other two verses and they consider the concluding of truce allowed if the Imam deems it right. They also argue, in support of their view, that the Prophet acted accordingly, as the truce of Ḥudaybiyya had not been concluded from necessity. According to Shāfi'ī, the principle is that polytheists must be fought until they have been converted or until they are willing to pay poll-tax (*jizya*). The acts of the Prophet in the year of Ḥudaybiyya are an exception to this [principle]. Therefore, says Shāfi'ī, a truce may never exceed the period for which the Prophet concluded truce in the case of Ḥudaybiyya. Still, there is controversy about the duration of this

period. According to some it amounts to four years, but according to others three or ten years. Shāfi'ī opts for the latter. As to the view of some, that in cases of emergency such as civil war and the like, the Muslims may conclude a truce on the stipulation that they pay the enemy a certain amount of money, this is based on the Prophet's example, for it has been related that he was seriously contemplating to bestow a third of the date-harvest of Medina upon a group of polytheists belonging to the Confederates with a view to induce them to move off. However, before he had had time to reach an agreement on the basis of the quantity of dates he had been allowed [by the people of Medina] to give away, God granted him the victory.⁵¹ The opinion of those who profess that a truce may only be concluded when the Muslims are in mortal fear of extinction, is founded on analogous application of the rule that Muslim captives may be ransomed; for when Muslims have been reduced to such a state they are in the position of captives.

Par. 7. The Aims of Warfare.

The Muslims are agreed that the aim of warfare against the People of the Book, with the exception of those belonging to the Quraysh-tribe and Arab Christians, is twofold: either conversion to Islam, or payment of poll-tax (*jizya*). This is based on [9:29]: *"Fight those who believe not in God and the Last Day and do not forbid what God and His Messenger have forbidden—such men as practise not the religion of truth, being of those who have been given the Book—until they pay the tribute out of hand and have been humbled."* Most lawyers likewise agree that poll-tax (*jizya*) may also be collected from Zoroastrians (*madjūs*) on the strength of the words of the Prophet: *"Treat them like the People of the Book."* There is, however, controversy with regard to polytheists who are not People of the Book: is it allowed to accept poll-tax (*jizya*) from them or not? Some, like Mālik, have taught that it may be collected from any polytheist. Others make an exception for the polytheist Arabs. Shāfi'ī, Abū Thawr⁵² and a few others maintain that poll-tax (*jizya*) may only be accepted from People of the Book and Zoroastrians. The

controversy is again brought about by the fact that a general rule conflicts with a particular one. The general rule is derived from [2:193 and 8:39]: *"Fight them until there is no persecution and the religion is God's (entirely),"*⁵³ and from the Tradition: *"I have been commanded to fight the people until they say: 'There is no god but God.' When they say that, then their lives and property are inviolable to me, except [in the case when] the [law of] Islam allows it [to take them]. They will be answerable to God."* The particular rule is founded on the Tradition mentioned earlier,⁵⁴ viz. that Mohammed used to say to the leaders of troops which he sent out to the polytheist Arabs: *"When ye will encounter your polytheist foes, then summon them to three things,"* etc. In this Tradition, poll-tax (*jizya*) is also mentioned. Now, some scholars hold that a general rule cancels a particular one if the general rule was revealed at a later date. These do not accept poll-tax (*jizya*) from others than People of the Book, since the verses prescribing, in general terms, to fight them are of a more recent date than the Tradition mentioned; for the general command to fight the polytheists is to be found in the *Sūrat Barā'a*⁵⁵ which was revealed in the year of the conquest of Mecca.⁵⁶ The Tradition in question, on the other hand, dates back from before the conquest of Mecca, in view of the fact that it contains a summons to emigration.⁵⁷ Others, however, maintain that general rules should always be interpreted in association with the particular rules, no matter whether the one is more recent than the other or whether this is unknown. The latter group, accordingly, accepts poll-tax (*jizya*) from any polytheist. The People of the Book are in an exceptional position with respect to the other polytheists because they have been excluded from the general rule just mentioned, on the strength of the particular rule given in [9:29]: *"... being of those who have been given the Book—until they pay the tribute out of hand and have been humbled."*⁵⁸ The poll-tax (*jizya*) itself and the rules related to it will be dealt with in the next chapter. So much for the principles of warfare. One famous question remains to be touched upon in this connection: that whether it is prohibited to march into hostile territory carrying a copy of the Koran. Most scholars do not consider it allowed because an authoritative rule to this effect has been handed down from the Prophet in an authentic Tradition. Abū

Notes to Chapter 4 (pp. 27–41)

1. Only the first chapter has been translated here.

2. ‘Abdallāh Ibn al-Ḥasan (d. 145/762), a traditionist.
3. As in most Islamic writings, the author assumes that the reader knows the Koran by heart, so that it was often sufficient to quote only a few words of the Koran texts. The reader was capable of completing them for himself. Here, the full text of each quotation will be given in the notes. Full text of [2:216]: *“Prescribed for you is fighting, though it be hateful to you. Yet it may happen that you will hate a thing which is better for you; and it may happen that you will love a thing which is worse for you. God knows and you know not.”*
4. Full text of [9:122]: *“It is not for the believers to go forth totally; but why should not a party of every section of them go forth, to become learned in religion, and to warn their people when they return to them, that haply they may beware.”* For the original meaning of this verse, which almost certainly is not referring to going to war, cf. R. Paret. *Sure 9, 122 und der Gihād. Welt des Islam*, n.s. II (1953), pp. 232ff.
5. Full text of [4:95]: *“Such believers as sit at home—unless they have an injury—are not the equals of those who struggle in the path of God with their possessions and their selves. God has preferred in rank those who struggle in the path of God with their possessions and their selves over the ones who sit at home; yet to each God has promised the reward most fair.”*
6. Full text of [48:17]: *“There is no fault in the blind, and there is no fault in the lame, and there is no fault in the sick. . .”*
7. Full text of [9:91]: *“There is no fault in the weak and the sick and those who find nothing to expend, if they are true to God and His Messenger. There is no way against the good-doers—God is All-forgiving, All-compassionate—.”*
8. The most important occurrence when the jihad becomes a personal obligation is an attack by the enemy on Islamic territory. All inhabitants of the area under attack—including women and slaves—are then obliged to expel the enemy.
9. Jibrīl is the Arabic name for the archangel Gabriel. According to the Islamic doctrine, God’s words were revealed to Mohammed through Djibrīl.
10. Full text of [8:39]: *“Fight them until there is no persecution and the religion is God’s entirely; then, if they give over, surely God sees the things they do.”*
11. Mālik Ibn Anas (d. 179/795), famous lawyer. The Traditions related by him were collected by his pupils in the compilation *al-Muwatṭa’*. The school founded on his doctrines, the Malikite, is still extant and counts its adherents chiefly in North Africa.
12. This Tradition can be found in *al-Muwatṭa’*: jihad 10. However, Av-

errores' suggestion that we are dealing here with words of the Prophet must be a *lapsus*. The Tradition in question goes back to Abū Bakr. Cf. *al-Muwatta'*: jihad 10.

13. Abū Bakr (d. 13/634), personal friend of Mohammed and after his death in the year 11/632, his successor (caliph). During his short reign, he subdued once more the revolting tribes of the Arabian Peninsula and made a beginning with the conquest of Syria and Iraq.
14. Al-Ḥasan Ibn Muḥammad al-Tamīmī, a non-identified traditionist.
15. Full text of [47:4]: *"When you meet the unbelievers, smite their necks, then, when you have made wide slaughter among them, tie fast the bonds; then set them free, either by grace or ransom, till the war lays down its loads. So it shall be; and if God had willed, He would have avenged Himself upon them; but that He may try some of you by means of the others. And those who are slain in the way of God, He will not send their works astray."*
16. Full text of [8:67]: *"It is not for any Prophet to have prisoners until he make wide slaughter in the land. You desire the chance-goods of the present world, and God desires the world to come; and God is All-mighty, All-wise."* This verse is generally taken to have been a reproof at the address of Mohammed for his releasing on ransom most of the captives after the Battle of Badr. The phrase *"make wide slaughter in the land"* goes to point out the danger that these released captives may, when occasion arises, attack the Muslims afresh.
17. Abū 'Ubayd Sa'd Ibn 'Ubayd al-Zuhri (d. 98/716), famous traditionist.
18. 'Abd al-Mālik Ibn 'Abd al-'Azīz Ibn al-Mājishūn (d. ca 213/827), Malikite lawyer.
19. 'Abd al-Salām Ibn Sa'īd Ibn Ḥabīb al-Tanūkhī, known as Saḥnūn (d. 240/854), one of the best known early Malikite lawyers.
20. Abū Ḥanīfa al-Nu'mān (d. 150/767), well-known lawyer. The School founded on his doctrines is called the Hanafite School and counts its adherents chiefly in the regions formerly belonging to the Ottoman empire and in Central Asia.
21. He is only allowed to do this with the permission of his owner.
22. This remark is not entirely correct. In view of its singular position in the context, it is possibly an interpolation.
23. For the full text of this Tradition, cf. p. 35.
24. Sufyān al-Thawrī (d. 161/778), famous traditionist and lawyer. A School founded on his doctrines existed for several centuries.
25. Al-Awzā'ī (d. 157/774), famous lawyer. Like the School of Thawrī, his School was superseded after a few centuries by other, still extant Schools.

26. Al-Shāfiʿī (d. 204/820), famous lawyer. He was the first to systematize the study of original sources (*ʿilm al-uṣūl*). The Shafiʿite School derives its name from him and obtains its widest recognition along the borders of the Arabian Peninsula, in East Africa and in the Indian Archipelago. Occasionally, he is related to have given two different solutions for one and the same problem. Later generations of scholars decided which interpretation was the most authoritative.
27. For the full text of this Tradition, see p. 41.
28. Full text of [9:5]: *"Then, when the sacred months are drawn away, slay the idolaters wherever you find them, and take them, and confine them, and lie in wait for them at every place of ambush. But if they repent, and perform the prayer, and pay the alms, then let them go their way; God is All-forgiving, All-compassionate"*.
29. Dāwūd Ibn al-Ḥaṣīn (d. 135/752–3), well-known traditionist.
30. ʿIkrima (d. 105/723–4), well-known traditionist. He was the slave of Ibn ʿAbbās and many Traditions were related on his authority.
31. ʿAbdallāh Ibn al-ʿAbbās (d. 68/686–7). One of the Companions of the Prophet and one of the most important scholars among the first generation of Muslims.
32. Anas Ibn Mālīk (d. ca. 92/710), well-known traditionist. In his youth, he was the Prophet's servant.
33. Abū Dāwūd (d. 275/888), author of one of the authoritative compilations of Traditions.
34. For the full text of K 9:5, see note 28.
35. During Mohammed's life, his relations with the unbelievers manifested a gradual escalation. This escalation is reflected in the Koran. In his Meccan period, he attempted to win the unbelievers by persuasion and arguments. When this failed, it was revealed that the believers should leave the unbelievers alone. The verse determining that polytheists may only be fought if they make the first move (K 2:190) dates from the beginning of his Medinese period. At last the verses were revealed which gave the absolute command to fight the unbelievers (K 2:216, K 9:5—the verse of the Sword—and K 9:29). According to most scholars, this command cancelled all previous verses with regard to the relations with unbelievers.
36. Sumra Ibn Jundub al-Fazāri (d. 59/678–9), well-known traditionist.
37. Zayd Ibn Wahb (d. 96/714–5), well known traditionist.
38. ʿUmar Ibn al-Khaṭṭāb (d. 23/644), second caliph of the Islam and successor of Abū Bakr (see note 13). During his reign, which lasted for ten years (13/634–23/644), Syria, Iraq and Egypt were conquered. He is regarded as the founder of the organization of the Islamic state.

39. This Tradition has not been included in any of the authoritative compilations.
40. For the full text, see note 28.
41. Al-Layth Ibn Sa'd (d. 175/791-2), well-known lawyer and traditionist.
42. Full text of [48:25]: *"They are the ones who disbelieve and have barred you from the Holy Mosque and the offering, detained so as not to reach its place of sacrifice. If it had not been for certain men believers and certain women believers whom you knew not, lest you should trample them, and there befall you guilt unwittingly on their account (that God may admit into His mercy whom He will), had they been separated clearly, then We would have chastised the unbelievers among them with a painful chastisement."*
43. Full text of [17:15]: *"Whosoever is guided, is only guided to his own gain, and whosoever goes astray, it is only to his own loss; no soul laden bears the load of another. We never chastise, until We send forth a Messenger."*
44. After the Emigration (Hijra) in the year 622 it became obligatory for fresh converts to Islam to emigrate to Medina and to join the other Muslims. After the conquest of Mecca in 630 this obligation fell into abeyance according to most scholars.
45. Sometimes there is controversy about the qualification of a certain act. It may, for instance, be obligatory according to some, and a matter of indifference according to others. In order to reconcile these opinions, it is often assumed that the act in question is recommendable.
46. Full text of [8:66]: *"Now God has lightened it for you, knowing that there is weakness in you. If there be a hundred of you, patient men, they will overcome two hundred; if there be of you a thousand, they will overcome two thousand by the leave of God; God is with the patient."* This verse has abrogated the previous one, 8:65: *"O Prophet, urge on the believers to fight. If there be twenty of you, patient men, they will overcome two hundred; if there be a hundred of you, they will overcome a thousand unbelievers, for they are a people who understand not."*
47. In the year 628, Mohammed concluded a peace treaty with the Meccans for a period of ten years. However, when the Meccans began to incite to rebellion some troops that were allied to Mohammed, he broke off the treaty and attacked Mecca, which he conquered in the year 630.
48. For the full text, see note 28.
49. Full text of [9:29]: *"Fight those who believe not in God and the Last Day and do not forbid what God and His Messenger have forbidden—such men as practise not the religion of truth, being of those who have been given the Book—until they pay the tribute out of hand and have been humbled."*

50. Full text of [8:61]: *"And if they incline to peace, do thou incline to it; and put thy trust in God; He is the All-hearing, the All-knowing."*
51. In the year 627, the Meccans besieged Medina with the assistance of some Bedouin tribes, the Confederates. These tribes had come along with the Meccans in prospect of financial reward. Mohammed attempted to bribe one of these tribes into moving away. At first, this tribe, Ghatafān, demanded half of the Medinese date-harvest, but when after some negotiating they had agreed on a third, the citizens of Medina remonstrated. However, before matters had been settled, Mohammed had succeeded in expelling the Meccans and their allied tribes in the Battle of the Trench.
52. Abū Thawr (d. 240/854), well-known lawyer. A school founded on his doctrines existed for a few centuries only.
53. Full text of [8:39]: *"Fight them until there is no persecution and the religion is God's entirely; then, if they give over, surely God sees the things they do."*
54. See p. 37.
55. The ninth chapter of the Koran, called *Sūrat Barā'a* or *Sūrat al-Tawba*, is considered as the last chapter revealed.
56. In the year 8/630.
57. For the full text, see note 44.
58. For the full text, see note 49.